

**The Great Lakes
Environmental Law Center**

*Protecting the world's greatest freshwater resource
and the communities that depend upon it*

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Re: *What legal arguments have been posited regarding the legality of requirements/benefits to place renewable energy generation in specific geographic areas? Have any official opinions from courts, attorneys general, etc. made decisions regarding those arguments?*

A complete response to this question would require a lengthy analysis of land use, zoning, property and environmental laws in Michigan and elsewhere. For the purposes of this response, a brief outline of the legal ramifications of wind turbine siting will be provided, since wind power is the most popular form of renewable energy development in Michigan. The most common legal issues arise in the areas of state and local zoning, property laws, and environmental laws.

Zoning Issues

Local zoning authority is granted by the Michigan Zoning Enabling Act, with certain guidelines and restrictions for how such authority may or may not be utilized.¹ Specifically, MCL §125.3201 states that “A local unit of government may provide by zoning ordinance for the regulation of land development...” Furthermore, a local legislative body may provide for special land uses in a zoning district, so as to subject certain land uses to zoning commission approval.² Reasonable conditions for approval of special land uses may be required in order to “protect natural resources, the health, safety, and welfare, as well as the social and economic well-being”

¹ MCL 125.3101 *et seq.*

² §3502(1).

of residents.³ Michigan zoning ordinances have a presumption of validity, granting fairly broad power to local units of government.⁴

Certain prohibitions on wind turbines have been upheld upon challenge in Michigan. In *Johnecheck*, for example, the plaintiffs sought to install two 300-foot wind turbine generators on their land. However, a local zoning ordinance prohibited the installation of 300-foot turbines. Such exclusionary zoning loses the presumption of validity, and “the burden falls on the zoning authority to produce evidence that the total exclusion is reasonably related to the health, safety, or general welfare of the community.”⁵ Plaintiff’s claims were dismissed in the case, and the 300-foot turbine exclusion was deemed to be valid.

It is not clear that a *complete* ban on wind turbines would be upheld in Michigan. A zoning ordinance that totally excludes a particular land use “is valid only if the total exclusion has a reasonable relationship to the health, safety, or general welfare of a community.”⁶ In *Ottawa County Farms*, it was held that while “aesthetics is a valid part of the general welfare concept [...], it may not serve as the sole reason for excluding a legitimate use of property.”⁷ Thus, for a local unit of government to totally exclude the installation of wind turbines, it would likely need to demonstrate greater impacts than just aesthetic displeasure. This area of law will certainly continue to develop as it relates to wind turbine construction.

Property and Environmental Issues

The successful siting and construction of wind turbines also involves a variety of other legal issues. Project managers must obtain easements from landowners as well as determine

³ §3504(4).

⁴ *Johnecheck v. Bay Twp.*, 2004 Fed.App. 1075N (6th Cir. 2004) (Citing *Bevan v. Brandon Twp.*, 475 N.W.2d 37 (Mich. 1991)).

⁵ *Id* at 1076.

⁶ *Ottawa County Farms, Inc. v. Polkton Twp.*, 345 N.W.2d 672, 674 (Mich.App. 1983) (citing *Bzovi v. Livonia*, 87 N.W.2d 110 (Mich. 1957)).

⁷ *Id.* at 675.

lease payment plans. Often, landowners receive annual lease payments or royalties for allowing a company to install wind turbines on their property.

If a proposed turbine site will be developed in a wetland area, a state Department of Environmental Quality permit will be required. The filling or draining of a wetland is prohibited without a permit in the state of Michigan.⁸ Furthermore, if the proposed site is on federal land, an environmental assessment may also be required pursuant to the National Environmental Policy Act.

Other miscellaneous considerations include: studies on the impact of migratory birds, songbirds, and bats; habitat, visual, and health impacts; noise; Federal Aviation Administration approval; Bureau of Land Management or Department of the Interior approval (depending on location); and community acceptance.

This brief assessment is not an exhaustive analysis of all the potential legal implications of wind turbine siting. However, it should demonstrate that the siting of wind turbines is a complex process involving multiple parties and laws, and great care should be taken to ensure that renewable energy projects are completed efficiently and correctly.

Respectfully submitted,

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⁸ MCLA §324.30304. This stems from CWA §404.